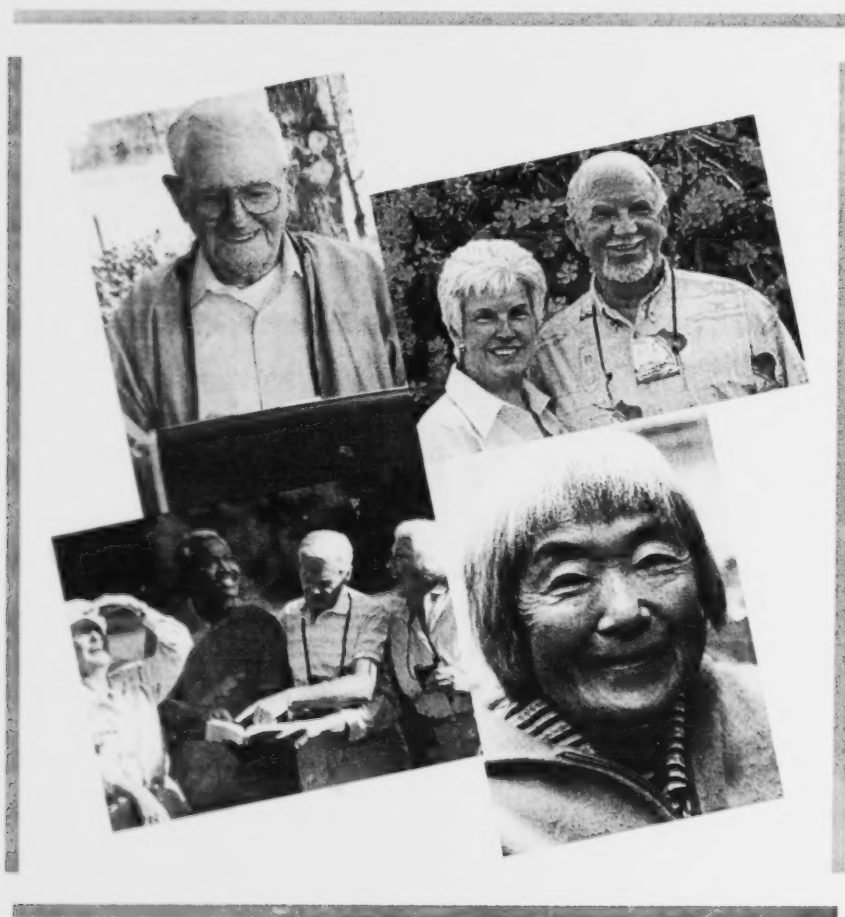


# Best Practices and Consumer Protection for Life Lease Housing in Ontario



March 2007

 Ontario

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## **1. Introduction**

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Life lease is a relatively new form of housing tenure in Ontario. Primarily for seniors, it provides the opportunity to live independently in a retirement community setting.

In a life lease arrangement, individuals purchase the right to occupy a dwelling unit for the rest of their life from the housing project sponsor.

Life leases have a number of characteristics in common with both condominium ownership and rental housing.

Life lease project sponsors are usually not-for-profit or charitable organizations that have an interest in developing housing to meet the needs of a seniors' community.

Often, projects provide amenities as well as limited services for residents.

Sponsors may build relationships with assisted-living programs or long-term care facilities to provide a continuum of care approach to support seniors.

Seniors are attracted to life leases by the opportunity to move from a private residence into a housing project where there is companionship and programs or services appropriate to a retirement lifestyle.

Purchasers often choose life lease housing based on its location, price, amenities and sense of community, rather than the form of tenure.

As a result, many residents may not fully understand what they are purchasing when entering into a life lease agreement.

In particular, life lease agreements determine the level of input into management, and conditions of occupancy and sale of the dwelling unit.

In Ontario, the relationship between the life lease sponsor and resident is defined in each life lease agreement and governed by contract and common law.

Life lease arrangements are not covered by Ontario's *Condominium Act, 1998*, or the *Residential Tenancies Act, 2006*.

The Ministry of Municipal Affairs and Housing is taking a lead role in developing possible strategies to recognize best practices, improve consumer protection, and support a viable, healthy life lease housing sector in Ontario.

## **We would like to hear from you!**

This discussion paper provides background information on life leases in Ontario and describes a number of issues the Ministry has identified to date. We want to hear from you about these issues.

## How to Participate

You can provide your comments by mail, fax, or email to:

Life Lease Housing Consultation  
Ministry of Municipal Affairs and Housing  
Market Housing Branch  
777 Bay Street, 14<sup>th</sup> Floor  
Toronto, Ontario M5G 2E5

Fax: 416-585-7607

Email: [lifelease@ontario.ca](mailto:lifelease@ontario.ca)

You can also complete the questionnaire online at:

<http://www.mah.gov.on.ca/lifelease>

If you have any questions about this document or the life lease consultation, please contact 416-585-4242 or 416-585-7145 or visit our website at: <http://www.mah.gov.on.ca/lifelease>

Comments or submissions must be received by **May 11, 2007**.

## **2. Background**

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Currently, there are at least 125 life lease projects in communities across Ontario, accounting for more than 8,500 units.

However, there are a number of different names under which life lease housing may exist across Ontario.

Terminology such as 'life estates', 'life tenure', and 'equity lease' has been used to describe similar arrangements.

In addition, some sponsors do not consider themselves to be developing a life lease project and may not identify their housing projects as such. This variation makes it difficult to account for the actual number of life lease projects across the province.

### **How Life Leases Work in Ontario**

Most life lease projects in Ontario follow the basic structure of a 'market-value' model.

Purchasers pay full 'market value' for the right to occupy the life lease unit.

When the occupancy ends, the resident or their estate will sell the life lease interest for whatever the market value is at that time.

Significant variation may exist in how individual life lease projects are developed and managed. Each project establishes its own agreement, which determines the conditions of occupancy and sale of the unit, and governance of the housing project.

There are also a small number of projects that use a 'declining-balance' model.

In this model, the purchaser pays an entrance fee based on an agreed upon portion of the market-value of the dwelling unit; the residual or resale value of the unit gradually declines toward zero over a specified period of time.

Life lease housing in Ontario has the following key characteristics:

- Projects are developed or sponsored by community-based, not-for-profit organizations (e.g. non-profit housing organizations, service clubs, and ethnic community or faith-based groups). Some municipalities have also sponsored life lease projects.
- The project sponsor and purchaser enter into a life lease agreement detailing the unit price, conditions of occupancy and what happens when the occupancy ends.
- Life lease housing projects may include high- or low-rise apartment buildings, semi-detached or townhouses, and detached houses. Prices are generally comparable to condominiums.
- A purchaser is required to make an investment ranging from 25% to 100% of the purchase price of the unit.



- An individual purchasing a life lease unit during the construction or initial marketing phase usually provides two deposits. The first, a pre-sale deposit, is provided when the purchaser reserves a unit in the building. This deposit is usually \$2,000 to \$5,000. The second deposit, provided at the time the 'life lease agreement' is signed, is usually 20% to 25% of the purchase price.
- The balance of the purchase price for the unit is due at occupancy. In most cases, the sponsor will not have a mortgage on the property.
- The length of occupancy varies in individual life lease agreements. In many agreements, the resident maintains the right to occupy the unit for the duration of their life (or until no longer capable of living in the unit). In other cases, the agreement may be for a term of 49 or 99 years.
- Residents pay property taxes and monthly maintenance fees for building services and utilities. These fees cover maintenance, reserve funds, administration, building insurance, landscaping, etc., and range from approximately \$100 to \$400 per month.
- At the end of occupancy, units are resold on the housing market. The resident bears responsibility for the sale, although sponsors often assist. In some cases, sponsors retain a right of first refusal on a unit resale.
- Sponsors often retain administration fees of 5% to 10% of resale value. Sponsors generally claim that these fees are charges for the marketing of the unit and its refurbishment.



## Statutes Affecting Life Leases

In Ontario, the *Assessment Act* clarifies that life lease housing falls within the residential property tax class.

The *Land Transfer Tax Act* exempts sales of life lease units from the payment of land transfer tax if the project sponsor is a not-for-profit or registered charitable organization.

Laws of general application to building and housing projects also apply to life leases (e.g. *Planning Act*, Building Code, and municipal zoning and by-laws).

Life lease housing is not covered under the *Condominium Act, 1998*, or the *Residential Tenancies Act, 2006*.

The contents of agreements entered into by sponsors and purchasers can vary widely. This variation can provide sponsors and purchasers with considerable flexibility to design life lease housing projects that suit the needs and desires of a seniors' community.

The lack of consistent legal, financial and governance structures for life lease projects can pose significant challenges for purchasers, and legal and real estate professionals involved in life lease transactions.

Life lease developers, sponsors, residents, and the real estate and legal communities generally agree that some form of enhanced consumer protection would help to protect purchasers and support the development of a viable, healthy life lease sector in Ontario.

### **3. Best Practices and Consumer Protection**

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The Ministry is seeking input to help identify best practices and develop appropriate measures for protecting the interests of all those involved in Ontario's life lease housing sector. If there is a life lease housing issue that has not been addressed in this paper, please feel free to add your comments in the "**Your Comments**" section.

#### **DEVELOPMENT ISSUES**

##### **A. Disclosure – Information Given to Prospective Life Lease Purchasers**

Prospective purchasers need adequate information to make informed decisions before entering into a life lease housing agreement. It is important that they fully understand the financial and legal implications of life lease tenure when deciding to purchase and move into a life lease unit.

The potential for misunderstandings increases when terms and conditions are not clearly spelled out in sales brochures, disclosure statements and life lease agreements, or when purchasers have not fully reviewed their agreement.

The level of input into property management, issues related to the sale of the unit, and overall control of the living environment are specific areas where detailed information is important at the time of purchase.

Disclosure of accurate, timely and complete information to purchasers, in writing, helps avoid situations where verbal commitments made about the development and construction of a life lease project are not honoured.

Most sponsors provide a range of information about the life lease project to potential purchasers before the sale of a unit, including:

- Admission criteria
- Incorporation documents
- Financial statements
- Unit price and method of payment
- Services and amenities
- Maintenance fees
- Rights and duties of purchaser, resident and sponsor
- Term of the life lease
- Conditions of resale (e.g. how resale value is determined)
- Procedures for dispute resolution

The disclosure of information about a life lease helps in the marketing of life leases as a legitimate housing choice for seniors.

Many consumers seek out independent legal advice related to the purchase of a life lease unit and, in some cases, sponsors require purchasers to provide a certificate of independent legal advice prior to entering into a life lease arrangement.

Without a consistent approach to disclosure, legal advisors may not have adequate or appropriate information upon which to base advice to consumers.

Both sponsors and purchasers recognize the need for accurate, timely disclosure. Disclosure requirement issues to be addressed include: the minimum contents of disclosure; timing; 'cooling-off periods' following disclosure; and, how to deal with a material change to disclosed information.

## **Issues for Public Consideration and Input:**

- How can prospective purchasers of life lease units be better informed?

### **B. Deposit Security**

Purchasers require assurance that deposit money paid for units during the construction or initial marketing phase of a project can be recovered if the sponsor fails to meet their obligations under the agreement.

The treatment of purchase deposits varies widely among sponsors. In some cases, deposits are held in trust; and in others, the deposits are used as working capital to fund construction of the project.

Many sponsors have identified the ability to use deposits, as opposed to obtaining financing from financial institutions and other lenders, as a major economic advantage of life leases.

Some jurisdictions require all deposits to be held in trust. This applies in Manitoba and in British Columbia.

Life lease projects are not covered under the Tarion Warranty Program (formerly the Ontario New Home Warranty Program).

Unless the sponsor or the purchaser has taken out an insurance protection policy for the purchase deposit, the deposit is not insured in the event the sponsor is unable to complete construction of the project.

Deposit security is a significant issue, as purchasers usually pay at least 25% of the purchase price as a deposit for the unit. If deposits are unsecured, failure of a project could lead to major financial losses for purchasers.

### **Issues for Public Consideration and Input:**

- How can the deposits of purchasers be best protected?

### **C. Pre and Post Construction Insurance**

The type and level of insurance coverage affects the ability of sponsors and purchasers to receive compensation should the project suffer a catastrophic loss.

While it is common practice to have insurance protection in place before and after construction, it is unknown whether all life lease projects are adequately insured or whether the appropriate type and amount of insurance exists.

Sponsors often carry only a small contingency in their construction budgets (e.g. 3% to 5%) and may be vulnerable to delays, cost overruns, fire, or natural disasters.

Canada Mortgage and Housing Corporation may insure a construction mortgage (subject to normal lending conditions), but may not insure the sponsor for long-term, take-out financing.

A requirement for all sponsors to carry specific types and levels of insurance before and after construction could provide the legal and financial communities, as well as the general public, with the assurance that all life leases have consistent insurance coverage.

Ensuring that there is adequate insurance to cover losses and liabilities during the construction phase is an important consideration for sponsors.

After occupancy, it is important that fire (or 'all-risk') and property insurance policies be in place to cover the replacement cost of the building, and that the common elements are covered.

Most sponsors maintain general liability insurance and many also carry a Boiler, Machinery and Pressure Vessel policy.

To protect residents in the event of a lawsuit against the sponsor, many sponsors add the residents of the project as "additional insured" on the general liability insurance.

Fire (or 'all-risk') and liability insurance policies carried by the sponsor do not protect residents against losses to the contents of their units or protect them from liability for damages they may cause.

As a result, most sponsors require the resident to provide proof of contents and liability insurance when first moving in and every year they live in the unit.

Manitoba requires sponsors to carry specific types and levels of insurance during the construction of the life lease project and once it is occupied.

For example, during construction, sponsors are required to carry a minimum of \$2 million in general liability in addition to 'all risk', and comprehensive boiler and machinery insurance.



Pre- and post-construction insurance is a significant consumer protection issue in life leases.

The content and amount of insurance coverage materially affects the ability of residents to receive compensation for the value of their life lease interest should the building suffer a catastrophic loss.

### **Issues for Public Consideration and Input:**

- What measures should be in place to ensure that adequate insurance coverage exists before, during, and after the construction of a life lease housing project?



## GOVERNANCE ISSUES

### A. Management of the Life Lease Housing Project

Both sponsors and residents have a significant interest in how decisions are made regarding the management of the housing project.

In all life lease models, the sponsor retains ownership of the project and individual units. As owner, the sponsor has primary responsibility for the financial viability and management of the housing project. Most sponsors reserve the right to appoint directors or delegate authority for decision-making purposes.

#### Resident Involvement in Management

Residents pay a significant amount of money to purchase the right to occupy their unit (often in the range of \$150,000 to \$400,000).

They are also responsible for selling their unit upon termination of the life lease agreement.

They have a financial interest in the maintenance and upkeep of dwelling units and common areas, and the financial status of the life lease project, as these affect the future value of their investment.

Another important management issue is the disclosure of financial information on the operation of the project.

Such information is used to determine monthly maintenance fees and potentially affects the value of the unit. In many life lease projects, there is limited opportunity for involvement in decision-making.

Residents have expressed interest in having greater input into decisions affecting the ongoing operation of the project. In some projects, sponsors have appointed an advisory board that includes residents.

Sponsors determine the scope, terms, and responsibilities of these advisory boards. A small number of life lease projects owned by not-for-profit organizations operate with a board composed solely of residents.

In contrast, condominiums in Ontario are required to establish elected boards and hold annual general meetings with unit-owners at which the financial position of the corporation is presented for discussion.

Manitoba requires annual meetings between the sponsor and residents, including disclosure of financial data.

### Use of Equity in the Housing Project

Sponsors have discretion over the financial management of their property, including the use of equity in the housing development, in accordance with provisions set out in the life lease agreement.

Lenders will not usually finance a life lease project until a minimum number of units have been sold.

As a result, purchaser deposits and revenue from the sale of units are often adequate to pay out construction loans when the building is occupied.

Many purchasers are former homeowners that are downsizing from larger homes and often do not require mortgage financing.

However, some purchasers are moving into their life lease unit from rental housing. For these residents, the ability to obtain mortgage financing is important.

The removal of equity from the project to finance operating or capital expenditures or other development ventures is an important issue for residents.

Any risk that may be created by such investments could potentially also be borne by residents who maintain a real financial interest in the unit value and financial viability of the project.

### **Issues for Public Consideration and Input:**

- What roles should sponsors and residents play in the financial and operational management of life lease projects?

### **B. Dispute Resolution**

The resolution of disputes in a timely, cost-effective and fair manner is of importance to both sponsors and residents.

Disputes may arise at any point related to the conditions of sale or occupancy of units, including almost any area in which there is a rule or contract requirement. Disputes may involve residents (individuals or groups) and sponsors, or may arise between residents.

Examples of areas of potential disputes include: involvement in governance and financial management of the project; amount and payment of monthly maintenance fees; services and amenities provided by the sponsor; parking; pets; and noise.

Most disputes can be handled between management and the resident that makes the complaint. A residents' association may also be helpful in resolving disputes between residents and in sharing information or negotiating solutions with sponsors.

Currently, the general principles of contract law and any provisions in the life lease agreement would apply in the event of a dispute.

In most cases, the courts are the only recourse to resolve disputes that can not be settled between the parties involved. However, some life lease agreements are structured to employ mediation or arbitration as an initial approach to resolve disputes.

Alternative dispute resolution methods, such as mediation or arbitration, can often offer faster and more cost-effective dispute resolution.

The perceived imbalance between the access of sponsors and residents to the resources needed to retain legal, financial, and property management professionals is also a consideration.

### **Issues for Public Consideration and Input:**

- What process should be in place for the resolution of disputes between sponsors and residents?

## C. Security of Tenure

The security of tenure provisions and termination process set out in life lease arrangements between sponsors and residents can vary from project to project.

Life lease agreements typically provide a resident with the right to occupy the unit for the rest of their life.

Significant variation exists in the security of tenure provisions set out in life lease agreements and the process for terminating an agreement.

Agreements include 'at-fault' termination grounds — where a sponsor may terminate the resident's life lease arrangement — due to intentional damage, monthly maintenance fee arrears, impairment of safety, or disturbance.

Life leases also contain 'no-fault' termination grounds, such as the death of the resident or sale of the life lease unit.

Life lease agreements outline the resident's security of tenure and protection for the sponsor against damage to the unit or building.

Careful consideration of 'at-fault' grounds for termination by both sponsors and residents is required to ensure that security of tenure is not unfairly limited, as residents sometimes have little or no input into the rules adopted by sponsors.

Provisions that allow a sponsor to terminate a life lease due to the physical or mental incapacity of the resident are a vital matter to seniors.

Rules for addressing the death of a resident, the status of the surviving spouse, and the status of estates are other important considerations affecting security of tenure.

### **Issues for Public Consideration and Input:**

- What security of tenure protections should be put in place for residents while taking into account sponsors' ability to manage and operate their projects?

### **D. Reserve Funds**

The establishment and use of reserve funds for a life lease project impacts the long-term financial viability of the project.

In Ontario, almost all life lease projects maintain a capital reserve fund for major building and equipment repair or replacement. A small number of projects also maintain a reserve to fund the repurchase of life lease units from residents.

Where reserve funds exist, they are funded by residents through the payment of monthly maintenance fees.

Information on reserve fund management, the proportion of monthly fees directed to reserve funds, and restrictions placed on the use of reserve funds all factor into determining whether reserve funds are adequate to meet future projected capital repair needs.

Condominiums in Ontario are required to direct a minimum 10% of the monthly maintenance fees to a reserve fund. Condominiums must also conduct regular independent reserve fund studies to determine the adequacy of the reserve fund.



Life lease projects are not covered under the Tarion Warranty Program. Therefore, residents are not covered against defects in construction, except any protection that may exist through contractor warranties.

### **Issues for Public Consideration and Input:**

- What is an appropriate level of reserve funds?
- What rules are needed to ensure that reserve funds are operated properly?

### **E. Sublet of Life Lease Units**

The subletting of life lease units is a major issue for residents who do not reside in their home for an extended period of time.

The ability to sublet a life lease unit during an extended absence can be an important financial and security consideration for some residents, whether it relates to estate planning, long-term travel arrangements, or financial security during periods of respite or rehabilitative care due to injury, illness or disability.

### **Issues for Public Consideration and Input:**

- How should the subletting of life lease units be addressed?



## **OTHER ISSUES**

### **A. Resale Value Retention**

Sponsors typically require residents to pay a portion of the resale value for their unit when it is sold.

When the resident of a life lease unit sells their unit, the agreement often requires that a portion of the resale value be provided to the sponsor to cover administration and unit refurbishment costs incurred by the sponsor.

In some cases, the resale fees are used by sponsors to expand facilities and common areas of the project.

This fee is usually 5% to 10% of the resale value, and is in addition to any real estate commission and legal costs incurred by the resident.

Unlike tenants of rental accommodation, life lease residents are responsible for the maintenance and repair of their individual units during occupancy; and, as in traditional homeownership, units are usually resold in an 'as-is' condition.

### **Issues for Public Consideration and Input:**

- Should sponsors be allowed to retain a percentage of a unit's resale value? If so, what controls should be in place to protect the vendor's interest?

## **B. Registration of Life Lease Agreements on Title**

The ability of residents to register their agreement on title can affect their access to mortgage financing and the security of their asset.

Variation exists from project to project on the ability for residents to register their agreement on title. Some sponsors actively encourage residents to register their agreement against the title to the property while others prohibit registration.

Registration of agreements on title can help protect or clarify a resident's interest in their unit when the life lease project is sold to a new owner and uncertainty exists about the status of a resident's investment in their unit.

Registration may also provide protection if the project enters bankruptcy or if foreclosure proceedings are commenced.

A prohibition placed on the registration of agreements on title may also limit a purchaser's ability to obtain mortgage financing to purchase a life lease unit.

From a sponsor's perspective, registration of agreements on title can impact their ability to obtain financing from some financial institutions, due to the complexities associated with any future sale of the project or the recovery of loans in the event of foreclosure.

### **Issues for Public Consideration and Input:**

- What rules should be in place for the registration of agreements on title for life lease residents while taking into account the financial interests of sponsors?

## **4. Your Comments**

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### **DEVELOPMENT ISSUES**

#### **A. Disclosure – Information given to prospective life lease purchasers**

- How can prospective purchasers of life lease units be better informed?

#### **B. Deposit Security**

- How can the deposits of purchasers be best protected?

#### **C. Pre and Post Construction Insurance**

- What measures should be in place to ensure that adequate insurance coverage exists before, during, and after the construction of a life lease housing project?

### **GOVERNANCE ISSUES**

#### **A. Management of the Life Lease Housing Project**

- What role should sponsors and residents play in the financial and operational management of life lease projects?

#### **B. Dispute Resolution**

- What process should be in place for the resolution of disputes between sponsors and residents?

#### **C. Security of Tenure**

- What security of tenure protections should be put in place for residents while taking into account sponsors' ability to manage and operate their projects?

**D. Reserve Funds**

- What is an appropriate level of reserve funds?
- What rules are needed to ensure that reserve funds are operated properly?

**E. Sublet of Life Lease Units**

- How should the subletting of life lease units be addressed?

**OTHER ISSUES****A. Resale Value Retention**

- Should sponsors be allowed to retain a percentage of a unit's resale value? If so, what controls should be in place to protect a vendor's interest?

**B. Registration of Life Lease Agreements on Title**

- What rules should be in place for the registration of agreements on title for life lease residents while taking into account the financial interests of sponsors?

**ANY ADDITIONAL COMMENTS**

## 5. Tell Us about Yourself

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You are not required to provide your name or other personally identifying information in this questionnaire. The information you do provide will be used for statistical purposes only.

**What part of the province are you from:**

**Answer:**

- ☐ South-western Ontario
- ☐ North-eastern Ontario
- ☐ North-western Ontario
- ☐ Central Ontario
- ☐ Eastern Ontario
- ☐ Not applicable

**Are you, or do you represent (check all that apply):**

- ☐ potential life lease resident
- ☐ current life lease resident
- ☐ seniors' organization
- ☐ life lease sponsor
- ☐ consultant/developer
- ☐ not-for-profit or charitable organization
- ☐ legal or real estate professional
- ☐ other \_\_\_\_\_

**Have you read any available articles or research papers on Life Lease housing from other sources?**

- ☐ Yes
- ☐ No

**Did you value this opportunity to provide input on best practices and consumer protection for Life Lease housing in Ontario?**

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree
- ☐ No opinion

**Any additional comments?**

Please do not include any personal information (e.g. name and address)





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